IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.146 OF 2003
IN
SUMMARY SUIT NO.3084 OF 2002

Natwarlal C. Mehta ...Plaintiff
Vs.
Jagdish R. Parekh ...Defendant

Mr.B.Saraf i/b. Kiran Jain & Co. for Plaintiff

Mr.S. Joshi i/b. Mr.J.K.Majithia for Defendant

CORAM: D.G. DESHPANDE,J.
DATED: 23RD NOVEMBER, 2004

P.C.

1. This is a suit of the Plaintiff for recovery of sum of Rs.4,00,000/- with interest. Claim for interest was given up by the Plaintiff's Advocate during his argument, therefore, the only claim remains of principle amount of Rs.4,00,000/-. Defendant raised an appeal that summary suit does not lie because there no written agreement or contract. The suit is based on the receipt issued by the Defendant to the plaintiff, in reply to the notice, wherein Defendant unconditionally and unequivocally admitted the liability to pay the principle amount but prayed for time because of difficulties in business. Counsel for the Plaintiff relied upon the Judgment of this Court reported in **1999, Bombay Case Reporter, 501 in the case of Dinaz Adi Bharucha Vs. Rajendra P. Ashar**

and others wherein the Court treated the suit of the Plaintiff in that as a Summary Suit even though there were three receipts and acknowledgments of liability in the reply notice. The case of the present plaintiff is exactly identical therefore, in view of the reported Judgment it has to be held that the suit is maintainable.

2. Defendant's Advocate states that the Plaintiff is a money lender, however, he could not sight any instances of the Plaintiff filing similar suits or indulging in money transactions with others, therefore it is a case where Defendant has no defence, he has clearly admitted in his reply notice. Hence, leave to defend the suit is granted to Defendant on depositing a sum of Rs.4,00,000/- in this Court, within a period of 8 weeks from today.

3. In the event of the Defendant depositing the said amount, the suit to be transferred to the list of Commercial Causes. Written statement or points of defence to be filed within a period of 12 weeks from today and Affidavit of documents or list of documents within two weeks thereafter. Discovery or inspection of documents within two weeks thereafter. Suit to be placed on regular board for hearing thereafter.

4. In the event of the Defendant's depositing the amount of Rs.4,00,000/- in the Court as aforesaid, the

Prothonotary & Sr. Master to invest the said amount with a Nationalized Bank, initially for a period of three years and to renew the same thereafter for suitable periods until further orders of the Court. Advocate for the Plaintiff to follow the investment order with the Prothonotary & Senior Master.

5. If the Defendant fails to deposit the aforesaid amount in the Court, liberty to the Plaintiff to have the suit set down forthwith for exparte hearing. The Summons for Judgment is disposed of.

******